



November 9, 2000

Mr. Edward Perry
Assistant City Attorney
City of Dallas
1500 Marilla 70 N
Dallas, Texas 75201

OR2000-4358

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. The City of Dallas (the "city") received a request on August 25, 2000, for 1) any and all documents by and between the city and Sky Sites relating to Proposal Number JE00030001 and 2) any and all documents between the city and Sky Sites relating to Sky Sites current Love Field advertising contract with the city. The city received a second request on October 3, 2000, that you assert covers the same information designated 'confidential and proprietary' by Sky Sites that is encompassed by the first request. You ask this office to consider the second request pursuant to the first request. We will consider both requests under ID# 141158.

You state regarding the two requests that you do not raise an exception to disclosure on behalf of the city, however, you advise this office that the requested information may involve the proprietary or property interests of Sky Sites and, therefore, the city is asking this office for a decision under section 552.305(d) of the Government Code. *See* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to the Public Information Act in certain circumstances). We note that you have sent a copy of your brief, in response to the first request, to Sky Sites. Further, we note that you have notified Sky Sites of the first request in accordance with the requirements in section 552.305(d). *See* Gov't Code § 552.305(d) (providing that governmental body make

a good faith attempt to notify the interested party about the request and include a statement, in the form prescribed by the attorney general, that the party is entitled to submit briefing to the attorney general).¹ We also note that you have released to the requestor information that was not designated as 'confidential.' You state the information you have submitted, Exhibit B, consists of the documents Sky Sites designated as 'confidential and proprietary.'²

In their response to this office, Sky Sites appears to raise section 552.110(b) as it states that release of information it specifies, pages 46-58 and page 70 of Book 1 of its proposal and Book 2, Exhibit D Financial Responsibility Questionnaire, would cause substantial competitive harm to the company. We note that Sky Sites has included Book 2 as information it feels is excepted from disclosure under section 552.110(b). However, the city did not submit Book 2 to this office for a ruling. Therefore this ruling addresses only pages 45-58 and page 70 of Book 1. Because the city did not submit Book 2, we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

Section 552.110(b) excepts from required public disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." As a general rule, information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing are not excepted from disclosure under section 552.110. See Open Records Decision No. 319 at 3 (1982). Pricing proposals are entitled to protection only during the bid submission process. *Id.* An entity will not meet its burden under section 552.110(b) by a mere conclusory assertion of a possibility of commercial harm. See generally *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The governmental body or interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing that substantial competitive injury would likely result from disclosure of the requested information. See Open Records Decision No. 661 (1999).

Sky Sites contends generally that the information it specified is excepted from disclosure because release of such would cause Sky Sites substantial competitive harm. After reviewing Sky Sites' contentions, we conclude that it has not shown, based on specific factual evidence, that disclosure of the specified information would cause substantial

¹The prescribed form can be found in the appendix of the 2000 Public Information Handbook which can also be found on the internet at www.oag.state.tx.us.

²Information that is subject to the Public Information Act is not confidential simply because the party submitting the information anticipates or requests confidentiality. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 676-78 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977).

competitive harm to Sky Sites. Consequently, the city must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

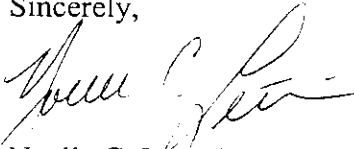
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 141158

Encl. Submitted documents

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